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## **Testimony in opposition to HB 6374 An Act Concerning Sexual Misconduct on College Campuses March 2, 2021**

Senator Haskell, Rep. Elliott, and members of the Higher Education and Employment Advancement Committee:

My opposition to HB 6374 emanates from my experience as a male survivor of sexual assault. I was molested by my first grade teacher and my sixth grade gym teacher, both women. For nearly an entire school year, my first grade teacher would put her hand in my crotch in front of the whole class if she suspected I had wet my pants. The worst part, however, was not the physical molestation, awful as that was, but what she did next. If she detected I was wet, she would say, "CLASS, LAUGH!" She did this to a number of other boys in the class, as well as to one Black girl.

One might think that as a survivor I would be supportive of any effort to make it easier to expel accused students and to shield accusers from both campus discipline as well as the ostensible trauma of having to testify against those whom they have accused of sexual assault. You would be gravely mistaken. Our nation was founded on basic principles, including fundamental fairness, due process, the presumption of innocence, and the right to cross-examine one's accusers. The Constitution and Bill of Rights reflect true best practices—in comparison to the one-sided laws we have already passed as Public Acts 14-11 (mandating the preponderance standard) and 16-106 (mandating affirmative consent).

I fully concur with the need to encourage survivors to come forward and report sexual misconduct. The problem with the blanket amnesty mandate in Section 1(b)(6) of HB 6374 promoted by the ironically named "Every Voice Coalition" is that it fails to strike the correct balance between encouraging genuine survivors to report sexual misconduct while avoiding the pitfall of unintentionally incentivizing false accusations by students seeking to escape campus discipline. If we are to truly listen to every voice, that means taking all sides of this issue seriously, not just student activists who apparently only see one side.

The concern that campus amnesty policies, whether they relate to alcohol, drugs, COVID-19 restrictions, or honor codes, can lead to incentivizing false accusations is not mere speculation. Both [Reason](#) and [The College Fix](#) have reported on the story of a male student ("John") at Indiana Wesleyan University who was expelled without due process after a female student ("Amy") took advantage of a campus amnesty policy to accuse him of sexual assault after repeatedly breaking curfew and "climbing up a rope ladder and crawling through the second floor window" to engage in intimate relations in violation of several of the Christian

college's rules. Amy later falsely accused John of giving her HIV as well, even though John subsequently tested negative for the virus. As Robby Soave describes this case in *Reason*:

John and Amy met during the fall semester. They engaged in amorous activity throughout the month of October [2019], having sexual intercourse on one occasion. They were technically violating school policy: IWU is a private, Christian school that has banned sexual activity outside of marriage. IWU also prohibits students of the opposite sex from congregating in each other's dorm rooms without official permission. Amy had repeatedly been reprimanded for breaking curfew and was told she could face repercussions for any further violations. On the evening of Saturday, November 16, after John texted her to come over, Amy opted to climb a rope ladder and sneak through John's second-floor window to visit him.

Amy and John made dinner and watched a movie on his couch with John's roommate, according to his lawsuit. Then John's roommate went to bed, and the couple had sex. Amy would later tell IWU officials that she told John "no" and "stop," but John denies that she ever said anything of the sort. On the contrary, she was enthusiastic and fully consented, according to John's account....

John's lawsuit [linked [here](#)] raises a number of credibility issues regarding Amy.

For one thing, IWU offers amnesty to people who file sexual misconduct complaints in the event that the investigation of the complaint turns up evidence that the accuser committed a policy violation. Amy was on thin ice with the administration following her repeated curfew violations. Filing a sexual misconduct report might have been one way to protect herself from getting into any further trouble.

Section 1(b)(6) allows a mere "good faith" standard for exempting complainants from disciplinary action in cases involving the use of alcohol or drugs: "a student or employee who reports or discloses the alleged assault...shall not be subject to disciplinary actions for violation of a policy of the institution of higher education *if the report or disclosure was made in good faith...*(emphasis added)." All complainants will claim that their allegations were made "in good faith," even if they are later proven false. It would be very difficult to prove any allegation was not made "in good faith," even in the above case.

As another example of this problem, I would cite a case where a female student at the University of Cincinnati was suspended indefinitely after a mutually drunken hookup with a male student, who, apparently fearing that she would report him to the campus Title IX office, reported her to the Title IX office first. The female student, like so many male students denied due process by Title IX campus kangaroo courts, filed a lawsuit against the university. Writing in *The Atlantic*, Caitlin Flanagan describes the situation:

The event in précis, as [summarized](#) by Robby Soave in *Reason*:

"Male and female student have a drunken hookup. He wakes up, terrified she's going to file a sexual misconduct complaint, so he goes to the Title IX office and beats her to the punch. She is found guilty and suspended."

The image that this conjured—of a couple waking up in the fetid bed of blackout sex, coming to the hideous realization of what happened and then lacing up their running shoes for a mad race across campus to the Torquemada of Title IX—is not just amusing, but offers a potentially useful precedent to the nation’s college men. The race is not always to the swift, but the functionaries of the college sex panic have an obdurate habit of determining that the victim of a blearily remembered amorous encounter is the person who decides to report it, with all ties broken by the one who reports it first.

In this case, who sexually assaulted whom, and without any independent witnesses, how can we tell? How do we be sure that the complainant is not trying to cover up his or her own sexual misconduct by complaining first? Or even filing a sexual assault complaint to avoid being punished for violating the school’s alcohol and drug policy, **a problem which HB 6374 explicitly incentivizes?**

Yet another example of this problem is the sexist “Jake and Josey” poster, put out by Coastal Carolina University, pictured at the end of this testimony. The poster attempts to portray a typical campus drunken hookup. It reads as follows: “JAKE was drunk. JOSIE was drunk. Jake and Josie HOOKED UP. Josie could NOT consent. The next day JAKE was charged with RAPE. A woman who is intoxicated cannot give her legal consent for sex, so proceeding under these circumstances is a crime.”

The obvious question here is that if both Jake and Josie were equally drunk to the point of intoxication, BOTH should be incapable of giving consent, especially under an affirmative consent standard. Why then was Josie not also charged with raping Jake? The unstated assumption here is one of “guilty by reason of penis.” Indeed, we know of only two cases, one in Washington state and the aforementioned case from the University of Cincinnati, where a female student was expelled for allegedly sexually assaulting a male student in a he said–she said case, and as one who believes in gender equality, I would no more presume the fairness of these cases than the ones where male students have been expelled without a shred of due process. Sadly, Title IX, a law intended to eliminate sex discrimination in education, is now being misused to foster such discrimination.

As Ashe Schow pointed out in response to the University of Cincinnati case, Title IX adjudications are significantly biased against both male students because of pervasive sex stereotyping as well as against whichever party failed to file the first complaint. (Title IX adjudications are also biased against students of color and disabled students as well, who are disproportionately being expelled and deprived of educational opportunities.)

So even if Josey happened to be the primary aggressor, she could be completely protected from the consequences of her actions, including her misuse of alcohol, by filing an unsubstantiated sexual assault complaint against Jake under HB 6374.

Under the “good faith” standard, it would be nearly impossible for a college to discipline someone who races to the Title IX office to protect herself or himself from discipline. I would suggest that instead of a “good faith” standard for accusers in HB 6374 and the current “preponderance” standard mandated by P.A. 14-11 for those accused, both sides should be held to the same standard, namely clear and convincing evidence—a standard upheld by the

Supreme Court in *Santosky v. Kramer* in cases of significant deprivation of privileges or of stigma.

Sections 2 and 3 of HB 6374 call for the establishment of a one-sided “Council on Sexual Misconduct Climate Survey.” The Council shall have numerous representatives from accusers/survivors rights organizations, including three appointed by the Connecticut Alliance to End Sexual Violence. There is not a single representative from an organization representing falsely accused students. Fundamental justice and fairness would require all sides be appropriately represented.

One-sided “campus climate surveys” based on self-reporting are not reliable and will typically overestimate the true rates of sexual assault, while ignoring the fundamental underlying problem that leads to this controversy. As former Senator Joe Markley noted on the Senate floor, we have a serious problem with an alcohol-lubricated casual hookup culture on our college campuses, where students are engaging in relations without any sense of commitment that many, especially women, later regret. Some of this may shade into sexual assault, but as there are typically no witnesses, we have no way of knowing for sure. By condoning bad behavior as long as all parties give an enthusiastic “yes,” campus climate surveys may only make the problem worse.

Without dealing with the underlying cause—extreme sexual permissiveness devoid of commitment, often fueled by alcohol and drugs—and allowing both colleges and advocacy organizations, including those invited by HB 6374 to be on the “Council on Sexual Misconduct Climate Survey” to promote promiscuity as long as there is “affirmative consent,” including campus “sex fests” promoting commitment-free BDSM as an ideal, the cycle of allegations of sexual assault and claims of false allegations will continue unabated.

Reject one-sided HB 6374 along with the racism, ableism, and misandry of the current system of Title IX campus kangaroo “justice.” Let us defend fairness and due process for all parties by supporting a fairer and more thoughtful amnesty policy that does not incentivize false allegations. Let us also change the moral culture on our college campuses that now claims that casual hookup BDSM is superior to and more “consensual” than marriage, commitment, and modesty, and that the only thing that one needs for intimacy is an enthusiastic “yes.” Yes might mean yes, but it does not mean kosher.

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